

Utah Antidiscrimination and Labor Advisory Council
Meeting Minutes
August 7, 2008
12:00 pm to 1:30 pm
Room 319

Council Members in attendance:

Sherrie Hayashi, Commissioner
Heather Morrison, UALD Division Director
Rick Thaler, General Public Representative
Marty Blaustein, Tenant Representative
Monica Whalen, Employer Representative
Robert Wilde, Employee Representative
Ralph Chamness, General Public Representative

Commission Staff in attendance

Sara Danielson, Council Secretary
Brent Asay, Wage Claim Unit Manager
Monica Austen-Smith, Employment Discrimination Case Manager
Hap Stephens, Fair Housing Case Manager
Todd Jenson, Assistant Attorney General assigned to UALD
Will Barlow, UALD Investigator

Not in attendance:

James Deans, Landlord Representative
Jathan Janove, Employer Representative
John Salazar Sr., Employee Representative
Alison Draper, Tenant Representative
Keith Nielson, Landlord Representative
Tony Montano, Employee Representative
John Chindlund, Employer Representative
Michael Styles, General Public Representative

Commissioner Hayashi called the council meeting to order at 12:00 pm. Sherrie welcomed everyone.

Approval of Minutes for the Last meeting

A quorum of the council was not present, so approval of the minutes was tabled until the November 13, 2008 meeting. (November '07, February '08, May '08 and August '08 minutes will be up for approval.)

Discussion Issues

Potential Inconsistencies between Utah Code Ann. §§34-28-1 and -7 –

Todd Jenson, the Attorney General representing UALD in wage claims explained that the payment of wages statute allows for certain exemptions from the statute. In subsection 1 are the general exemptions from the statute; governments, farming etc, it also contains the language “any other employment where an agreement exists between employer and employee providing for different terms of payment.” In subsection 7, it states that any agreement providing for different terms of payment must be approved by the Commission. These subsections seem to be in conflict. He suggested that the two sections be tied together in some manner.

Discussion was held. Issues discussed were: 1) Does a clarification need to be made, and if so, how; 2) should a dollar limit be placed on the division approval, so that highly paid executive pay agreements do not need to be approved; 3) when should approval be given (the division currently approves when a dispute arises); and 4) what form should the approval be in, i.e. written or verbal.

Bob Wilde moved that subsection 1 be amended with the language “any other employment where an agreement, approved by the division pursuant to §34-28-7, exists between...” Monica Whalen seconded. No vote taken as quorum present.

Sherrie stated that the Commission will prepare language to be voted on at the next meeting in November, and council member would be encouraged to attend so that a quorum was present.

Proposed amendments to the payment of wages statutes – Pay Cards –

Heather Morrison explained the methods by which payment of wages are allowed. She stated that more and more employers want to use pay cards (like a debit card).

Discussion was held: Issues discussed were: 1) Are pay cards already allowed in the statute; 2) What kind of paper trail is there with pay cards; 3) Is there still a requirement for a pay stub listing the deductions; and 4) Are there restrictions and/or fees to the employee for using the pay card?

Brent Asay stated that the Division’s current practice is to tell employers that yes pay cards can be used with the following 3 conditions – 1) convenient access to machine, 2) for each pay period 2 times withdraw without fee, thereafter a fee can be charged; and 3) access pay stub on payday. He stated that these conditions just sounded reasonable.

Sherrie stated that further research is needed. She asked Brent to check with the payroll section of State Finance (the state uses them) and with other states to see how they are handling pay cards. She asked that if Rick and Monica had clients with particular experience, please pass that information along to Brent.

GRAMA and the UALD Files –

Heather explained that currently, UALD files are protected from access by anyone after UALD closes their investigation. The current practice is that parties to the case have to actually be in federal court before access is granted. She asked if this should be changed, so that parties can access their own file until the retention is met and the file destroyed?

Discussion was held. Ralph Chamness moved for no change.

Updates:

1. Attorney's fees in wage claims –

Heather asked the question – Should the division be able to award attorney fees in wage claims at the Administrative level. Rick Thaler stated that an associate of his had done some research and surrounding states do allow for attorney fees at the administrative level.

Discuss was held. Issues discussed: 1) Who should receive the attorney fees: prevailing party, claimant only; 2) should there be a dollar level set before attorney fees are awarded; and 3) how should fees be determined?

Heather suggested that the Commission look through the information Rick found, and then have some concrete proposals, various options, for the November Advisory Council.

2. Tip Rule –

The tip rule is off and running. Sushi Chefs are chefs and cannot participate in tip pools, however, they can keep and tips given to them.

3. “Uniforms” definition -

Brent stated that research had been done and it was determined that the Commission does not have statute authority to determine what qualifies as a uniform. Based on this, there are 2 possibilities; 1) repeal the uniform rule, but add language to the deduction rule to say that a deduction for uniforms cannot take an employee below minimum wage; or 2) put language in the statute to authorize the Commission to be involved in determining what a uniform is. Discussion was held.

Council Members present recommended going for a statutory change. The Commission will draft proposed language to be reviewed at November's meeting.

Sherrie adjourned the meeting at 1:30 pm.

Next Meeting – November 13, 2008